IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.721 OF 2006

Richard D'Souza ...Petitioner.

Versus

Deputy Collector of
Appeals (B.S.D.) & Ors. ...Respondents.

Shri Ashish Agarwal for the Petitioner.
Shri M.H.Solkar, A.G.P for the Respondents.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 21st FEBRUARY, 2006.

P.C. :

1. Heard Shri Agarwal - learned Counsel appearing for the petitioner and Shri Solkar - learned Counsel appearing for the respondents.

2. The petitioner claims to be in use, occupation and possession of a piece of agricultural land, which is more particularly described in Para-1 of this Petition. He approached the Tahsildar, Kurla and requested him to record his name in the record of rights as "Kabjedar" in respect of this property. This claim was rejected by the Tahsildar by order dated 1st November, 1990. An Appeal against this order was also dismissed on 22nd August, 1991.

3. The petitioner thereafter filed a Civil Suit being Suit No.6075 of 1991 in the City Civil Court. The City Civil Court passed an order on a Notice of Motion taken out in the aforesaid Suit and allowed the petitioner to withdraw the Suit with liberty to file an Appeal before the concerned officer and further direction was issued that the said Appeal will be considered on merit and without going into technicalities of limitation, provided the same is filed on or before 16th November, 1992.

4. Accordingly, an Appeal/Revision Application was filed, but, the Additional Commissioner has rejected the same on the ground of limitation and has held that it is not maintainable.

5. It is not disputed that the order under challenge before the Additional Commissioner, Konkan Division is dated 22nd August, 1991. However, prior thereto the petitioner had approached the Authorities under the Land Revenue Code. In the application for condonation of delay, it was pointed out that the applicant could not approach the Authorities as he is extremely poor and cannot even engage services of an Advocate.

6. In the peculiar facts of this case, where there is explanation put-forward, viz., that the petitioner had approached the City Civil Court and withdrew the Suit with liberty to file Appeals, then, it was plain duty of the Commissioner to have decided the matter on merits and not dismiss the revision application only on the ground that the petitioner has approached the Revisional Authority after a period of 13 years. That is how the order of the City Civil Court is worded and the same is not interfered with. He had filed the Appeal before the Appellate Authority well within time and the Revisional Authority should have then gone into the correctness or otherwise of the finding recorded by the Appellate Authority.

7. Accordingly, the order passed by the Additional Commissioner on 4th April, 2005 is set-aside.

8. The annexure at Exh.C to this Petition at Page-19 terms the proceedings before the Additional Commissioner, Konkan Division, as Appeal under Section 257 and the same is numbered as Appeal No.395 of 2004. It is not clear as to how the Additional Commissioner has treated this as a Revision. He has treated it as a Revision on the basis that the petitioner is aggrieved

by the order of the Deputy Collector (Appeals).

9. It would be open for the petitioner to point out that the proceeding indeed is an Appeal and that he has rightly invoked the jurisdiction in that behalf. In any event, even if the said proceeding is treated as a Revision, it should be disposed of on merits and in accordance with law after giving an opportunity to the petitioner of being heard. The Commissioner to endeavour and dispose of the proceeding within a period of six weeks from the date of receipt of copy of this order. All contentions on merits are expressly kept open.

10. All concerned to act upon an authenticated copy of this order.

(S.C.DHARMADHIKARI,J.)